

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 25, 2006

STATE OF TENNESSEE v. TIMOTHY CARROLL CASTEEL

Direct Appeal from the Circuit Court for Bedford County
Nos. 15882, 15883, 15884, & 15885 Robert Crigler, Judge

No. M2005-02907-CCA-R3-CD - Filed January 24, 2007

The defendant, Timothy Carroll Casteel, pled guilty to four separate charges of aggravated robbery. He was sentenced to eleven years for each conviction, with two of the sentences to be served concurrently with each other and the remaining sentences to be served consecutively to each other and consecutively to the concurrent sentences. The defendant's total effective sentence was thirty-three years in the Department of Correction. On appeal, he challenges the trial court's imposition of consecutive sentences. Upon our review of the record and the parties' briefs, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which DAVID H. WELLES and NORMA MCGEE OGLE, JJ., joined.

Andrew Jackson Dearing, III, Assistant Public Defender, Shelbyville, Tennessee, for the appellant, Timothy Carroll Casteel.

Paul G. Summers, Attorney General and Reporter; David E. Coenen, Assistant Attorney General; W. Michael McCown, District Attorney General; and Michael D. Randles and Ann L. Filer, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

BACKGROUND

The defendant was indicted for aggravated robbery in case numbers 15882, 15883, 15884, and 15885. These charges arose out of a series of convenience store robberies on April 24th, April 29th, April 30th, and May 2nd, 2005. In each situation, the defendant entered the convenience store armed with what appeared to be a handgun and demanded money from the proprietor. Once apprehended, the defendant confessed to robbing the four stores. On September 19, 2005, he entered

an open plea of guilty to all charges, with the trial court to determine the length and manner of service of his sentences following a sentencing hearing.

At the November 21, 2005 hearing, the defendant testified that he was twenty years old and a high school graduate. The defendant stated that at the time of his arrest he was working at 82 Auto Sales, and he admitted that he had been using crack cocaine for three and a half months prior to his arrest. The defendant said that he lived with Tammy Clanton and Bobby Vandergriff, and he would stay home and watch Clanton's children while she and Vandergriff "went to go get the drugs." The defendant recalled that Clanton's children were eight, eleven, and twelve years old.

The defendant stated that it was Vandergriff who planned the robberies. According to the defendant, "[Vandergriff] would tell me when to do it. He would tell me where he would be waiting on me at, and he would tell me how to do it." The defendant said that he used a "play gun" to commit the robberies, but he admitted that he wanted the victims to believe it was a real gun. The defendant testified that Vandergriff would drive him to the location and then wait for him down the street. The defendant said that after he robbed the victims he would give the money to Vandergriff who would "[b]uy the drugs." The defendant said that being in jail has allowed him to learn from his mistakes and not listen to other people. The defendant admitted to having prior convictions and to previously having his probation revoked.

On cross-examination, the defendant admitted that he was convicted of theft, attempted automobile burglary, and vandalism in September 2004, and was on probation for those convictions at the time he committed the present robberies. The defendant also admitted that he had another theft conviction in February 2004, and had his probation revoked on that conviction and had to serve 120 days in jail. The defendant acknowledged that at the time of the hearing he had a probation revocation warrant pending in general sessions court on his theft, attempted automobile burglary, and vandalism convictions. The presentence report was introduced into evidence at the hearing.

Following the sentencing hearing, the trial court sentenced the defendant to eleven years in the Department of Correction for each conviction.¹ The trial court ordered that two of the sentences run concurrently with each other and the remaining sentences run consecutively to each other and consecutively to the concurrent sentences, for a total effective sentence of thirty-three years. The trial court ordered consecutive sentencing because the defendant was on probation at the time he committed the robberies. *See* Tenn. Code Ann. § 40-35-115(b)(6). The trial court also indicated that the defendant was a dangerous offender whose behavior indicated little or no regard for human life

¹ The trial court enhanced the defendant's sentences based on his history of criminal convictions; that the offense involved more than one victim; the offense involved a victim and was committed to gratify the defendant's desire for pleasure or excitement; his previous history of unwillingness to comply with the conditions of a sentence involving release in the community; the defendant had no hesitation about committing a crime when the risk to human life was high; and the crime was committed under circumstances under which the potential for bodily injury to a victim was great. *See* Tenn. Code Ann. § 40-35-114(2), (4), (8), (9), (11), and (17). The court did not find any mitigating factors. The defendant is not challenging the enhancement of his sentences on appeal.

and no hesitation about committing a crime in which the risk to human life was high. *See id.* § 40-35-115(b)(4).

ANALYSIS

On appeal, the defendant challenges the trial court's imposition of consecutive sentences. Specifically, the defendant contends that consecutive sentencing was unjustly deserved in relation to the seriousness of the offense and resulted in a gross disparity in sentencing.

When an accused challenges the length and manner of service of a sentence, this court conducts a de novo review of the record with a presumption that the trial court's determinations are correct. Tenn. Code Ann. § 40-35-401(d). This presumption of correctness is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances. *State v. Pettus*, 986 S.W.2d 540, 543-44 (Tenn. 1999). However, if the record shows that the trial court failed to consider the sentencing principles and all relevant facts and circumstances, then review of the challenged sentence is purely de novo without the presumption of correctness. *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). On appeal, the party challenging the sentence imposed by the trial court has the burden of establishing that the sentence is erroneous. Tenn. Code Ann. § 40-35-401, Sentencing Commission Comments.

In conducting our de novo review, this court must consider (a) the evidence adduced at trial and the sentencing hearing; (b) the pre-sentence report; (c) the principles of sentencing; (d) the arguments of counsel as to sentencing alternatives; (e) the nature and characteristics of the offense; (f) the enhancement and mitigating factors; and (g) the defendant's potential or lack of potential for rehabilitation or treatment. *Id.* §§ 40-35-103(5), -210(b).

A trial court may impose consecutive sentencing upon a determination by a preponderance of the evidence that one or more of the criteria set forth in Tennessee Code Annotated section 40-35-115(b) exists. Pursuant to this code section, a trial court may order consecutive sentencing if any of the following criteria are found by a preponderance of the evidence:

- (1) The defendant is a professional criminal who has knowingly devoted such defendant's life to criminal acts as a major source of livelihood;
- (2) The defendant is an offender whose record of criminal activity is extensive;
- (3) The defendant is a dangerous mentally abnormal person so declared by a competent psychiatrist who concludes as a result of an investigation prior to sentencing that the defendant's criminal conduct has been characterized by a pattern of repetitive or compulsive behavior with heedless indifference to consequences;

(4) The defendant is a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high;

(5) The defendant is convicted of two (2) or more statutory offenses involving sexual abuse of a minor with consideration of the aggravating circumstances arising from the relationship between the defendant and victim or victims, the time span of defendant's undetected sexual activity, the nature and scope of the sexual acts and the extent of the residual, physical and mental damage to the victim or victims;

(6) The defendant is sentenced for an offense committed while on probation; or

(7) The defendant is sentenced for criminal contempt.

Id. § 40-35-115(b). Because these criteria are stated in the alternative, the trial court need only find one of the criteria present to support a determination of consecutive sentencing.

If the trial court finds that the defendant is a “dangerous offender,” it must also determine whether the consecutive sentences are reasonably related to the severity of the offenses and serve to protect the public from further criminal conduct by the offender. *State v. Wilkerson*, 905 S.W.2d 933, 939 (Tenn. 1995). Additionally, the trial court should consider general sentencing principles including whether the defendant is amenable to rehabilitation. *See* Tenn. Code Ann. § 40-35-103. It is within the sound discretion of the trial court whether to impose consecutive or concurrent sentences. *See State v. Adams*, 973 S.W.2d 224, 230-31 (Tenn. Crim. App. 1997).

As noted earlier, the trial court ordered consecutive sentences based on the defendant being on probation when he committed the offenses. *See* Tenn. Code Ann. § 40-35-115(6). At the sentencing hearing, the defendant admitted that he was convicted of theft of property up to \$500, attempted burglary of an automobile, and vandalism in September 2004 for which he was sentenced to eleven months and twenty-nine days on probation. He admitted that at the time of the commission of the present aggravated robberies, he was on probation for the September 2004 convictions. At the time of the hearing, the defendant had a probation revocation warrant pending in general sessions court for violating his probation on the theft, attempted automobile burglary, and vandalism convictions. The record clearly supports consecutive sentencing on this basis.

The trial court also indicated that the defendant was a “dangerous offender,” *see id.* § 40-35-115(b)(4), because “[w]hether he had a real gun or not, the circumstances surrounding these offenses create a risk to human life whenever there is a one-on-one confrontation like this somebody is liable to get hurt one way or the other.” We note that these findings do not fall within the exact parameters of *Wilkerson*, nonetheless, the fact the defendant committed the robberies while on probation is a sufficient basis to sentence him consecutively.

Moreover, the defendant's argument that consecutive sentencing was unjustly deserved amounts to little more than a recitation of the principles of sentencing, and in any event, is unsupported by the evidence. The defendant robbed four convenience stores in less than a two-week period armed with what he made the victims believe to be a handgun. The record reflects that the defendant did admit to his involvement in the robberies but only after he was apprehended. The record also indicates that the defendant violated his probation on a previous conviction and was on probation when he committed the present offenses, which reflects poorly on his amenability to correction. As such, the defendant has failed to prove that the sentences imposed by the trial court are erroneous; therefore, we conclude the trial court acted within its discretion in ordering consecutive sentences.

CONCLUSION

Based on the aforementioned reasoning and authorities, we affirm the judgments of the Bedford County Circuit Court.

J.C. McLIN, JUDGE